IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15680 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVANGBHAI ARVINDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15680 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

MR M.A. SHAIKH ADDL. CENTRAL GOVT. STANDING COUNSEL for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/01/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application

the petitioner has challenged the order passed by District Magistrate, Ahmedabad, on 28th of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act for short) directing detention of present petitioner under the above said Act because the District Magistrate, Ahmedabad acting under the PBM Act reached to the subjective satisfaction that it was necessary to prevent the petitioner from acting in a manner prejudicial to the maintenance of supplies of essential commodities like kerosene and diesel, essential to the community. The petitioner came to be detained in pursuance of the above said order from 27th of November, 2004.

2. The grounds of detention placed on record reveal that the petitioner was de facto manager of one BPCL Petrol Pump, in the name of Shree Appabhai Patel & Co., for which necessary permission and licences were issued to the said company. On 29th of June, 2004 and 30th of June, 2004, task force of the Director of Civil Supplies, Gandhinagar, along with panchas, visited the said petrol pump situated on Bagodara - Kheda Highway Road at Dholka. It was found that the stock register, required to be maintained as per law, was not properly maintained and there was a difference between the quantity mentioned in the Stock Register and actually found in the tanks of diesel and petrol. In petrol, the actual quantity of 382 liter was found less while in diesel 167 liter diesel was found less than noted in the register. Record density of petrol and diesel was also found less than the approved standard of density. It was also found from the report of Forensic Science Laboratory that the sample of diesel seized from the pump of the petitioner and sent to the Forensic Science Laboratory indicated adulteration of blue kerosene, because the diesel was found tainted with blue colour. A panchnama of the above procedure done at the spot was drawn. Criminal case under Section 3(7) of the Essential Commodities Act, 1955 was also lodged against the petitioner. The detaining authority, from the above material placed before him, came to the conclusion that the petitioner was acting in the manner prejudicial to the maintenance of supplies of essential commodities like kerosene and diesel, essential to the community, for his personal gain and in the contravention of the Essential Commodities Act and, therefore, the detaining authority came to the conclusion that the action already taken against the petitioner for cancelling the licences, filing case under the Essential Commodities Act etc. were insufficient and to prevent

forthwith serious illegal activities of the petitioner, only alternative was to pass orders under Section 3(2) of the PBM Act. The detaining authority therefore passed aforesaid order of the detention of the petitioner which is under challenge.

3. Learned Advocate Mr.H.R. Prajapati for the petitioner, learned AGP Mr. HM Prachchhak for respondents No. 1, 2 and 3 and learned Addl. Central Govt. Standing Counsel Mr. M.A. Shaikh for respondent No.4 Union of India were heard at length. Affidavit-in-reply filed by the respondent No.1 Deputy Secretary to the Govt. of Gujarat, Food, Civil Supplies & Consumer Affairs Department and affidavit-in-reply filed by respondent No.2 - detaining authority, as placed on record, by learned AGP, were also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and controverted by learned AGP Mr. Prachchhak and learned Addl. Centra. Govt. Standing Counsel Mr. Shaikh, it appears that this petition can be examined and disposed of on the sole ground whether there was an unexplained delay in considering and deciding the representation preferred by the petitioner to the Hon'ble Minister of Food and Civil Suppliers, State of Gujarat, affecting his constitutional right as guaranteed by Article 22(5) of the Constitution of India. Learned AGP Mr. Prachchhak has vehemently opposed this ground and stated that the representation of the petitioner received by the concerned Officer on 15th of December, 2004 was duly considered expeditiously and on day-to-day basis and was rejected on 18th of December, 2004 and was duly communicated to the detenu. My attention was drawn to the affidavit-in-reply filed by respondents No. 1 and 2 in this respect.

5. Coming to the contention raised in this respect, certain dates are not in dispute. Representation of the petitioner dated 4th of December, 2004, came to be received by the Minister of Food and Civil Supplies Office on 7th of December, 2004 and was forwarded to the Special Branch, Department of Food and Civil Supplies by the Office of the Ministry of Food and Civil Supplies. In Special Branch of Food and Civil Supplies, this representation received on 9th of December, 2004. However, in para -6 of the reply filed by the respondent No.1 it has been stated that the said representation was received by the Special Branch of Food, Civil Supplies & Consumer Affairs Department on 15.12.2004. The file was prepared by the Special Branch on 15th of December, 2004.

The said file was placed before the Section Officer and Deputy Secretary, who cleared the said file on 15th of December, 2004 itself. Thereafter, the said file was placed before the Principal Secretary, who cleared the file on 16th of December, 2004 and the file further processed upto the Hon'ble Minister of Civil Supplies for appropriate orders on 17th of December, 2004. The Hon'ble Minister of Civil Supplies cleared the said file on 18th of December, 2004 and detenu was informed about rejection of representation by letter dated 18th of December, 2004.

6. True it is that, in the order of detention served upon the petitioner, it is categorically mentioned that to which authorities, the petitioner might submit representation in respect of his detention. Learned AGP contended that instead of making representation to these authorities, the representation came to be submitted to the Hon'ble Minister, Food and Civil Supplies, causing delay upto 15th of December, 2004 and thereafter the file was processed on day-to-day basis without causing any delay.

7. In the facts and circumstances of this case, it is true that the representation was addressed by the detenu to the Hon'ble Minister, Food and Civil Supplies. The question which arises precisely in the narrow spectrum of the matter, is whether representation forwarded by the detenu was attended without any delay and without causing any harm to the right of the petitioner under Article 22(5) of the Constitution of India, by the State Government. Ultimately, it was for the Hon'ble Minister, Food & Civil Supplies to take final decision in the matter of representation preferred by the petitioner.

8. From the record, it is apparent that the representation of the detenu, which is dated 4th of December, 2004, was received by the Ministry of Food and Civil Supplies, on 7th of December,2004. On the same day, the said representation was forwarded to the Special Branch of the Food, Civil Supplies and Consumer Affairs Department. The representation in original denotes that the said representation received by the Special Department of Ministry of Food and Civil Supplies on 9th of December, 2004. Now, according to the affidavit filed by respondent No.1, the said representation was dealt with from 15th of December 2004 and ended in rejection on 18th of December, 2004 by concerned Hon'ble Minister. Thus, after 15th of December, 2004, though the representation preferred by the petitioner was properly

dealt with on day-do-day basis by the concerned Department of the Government, but said representation received by the Special Department of Food and Civil Supplies on 9th of December, 2004, was not taken into consideration from 15th of December, 2004. It may not be said that right from 9th of December, 2004 to 15th of December, 2004, the said representation was not attended by the concerned Department, but it appears that for this period, there is no explanation coming forth from the concerned Department.

9. The right to an instant determination as to the lawfulness of an existing imprisonment is the substantial right made available by Article 22 of the Constitution of India. In case of preventive detention of a citizen, Article 22(5) of the Constitution of India enjoins the obligation of the appropriate government or the detaining authority to accord the detenu the earliest opportunity to make a representation to consider that representation speedily. The right to make representation implies the right of making an effective representation.

10. Thus, the established law is not the delay itself, but unexplained delay irrespective of the length of such delay, is fatal for the preventive detention and further detention of such detenu becomes unlawful. In the matter of RAJAMMAL vs. STATE OF TAMIL NADU, as reported in AIR 1999 SC 684, in para-9, after considering many decisions, the Apex Court observed as under :

> " The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

11. In an unreported decision of the Division Bench of this Court in Spl. Criminal Application NO. 445 of 1994, as decided on 8th of January, 1995, while dealing with a detention in PASA Act when representation was addressed to the Hon'ble Chief Minister by the detenu, after relaying on a decision of the Apex Court in the matter of RAGHAVENDRA SINGH vs.SUPERINTENDENT, DISTRICT

JAIL, KANPUR, as reported in 1986 SC page 256 and in the matter of GULZARA SINGH & Ors. etc. vs. STATE OF PUNJAB & Ors. as reported in JT 1993 (3) SC 668, the Division Bench of this observed that the delay by itself is not a ground which proves to be fatal if there is an explanation. The short delay cannot be given undue importance having regard to the administrative action but where there is no explanation whatsoever for the delay caused irrespective of length of delay, such a delay becomes fatal for the detention of a detenu under the Preventive Detention law.

12. In the present case, though the representation was addressed to the Hon'ble Minister for Food & Civil Supplies, but the representation, undoubtedly, was preferred to the State Government. The period from 9th of December, 2004 to 15th of December,2004, remains unexplained in respect of representation preferred by the petitioner. In these circumstances, the further detention of the detenu becomes invalid, illegal and in contravention of the right conferred upon the detenu by Article 22(5) of the Constitution of India. In this view of the matter, the order of detention challenged in this petition is required to be quashed on this ground alone without discussing any other contentions raised.

13. In the result, in view of the above discussion, the petition is allowed. The order passed by the District Magistrate, Ahmedabad, on 28th of August 2004, against the petitioner in exercise of powers under Section 3(2) of the PBM Act, 1980, is hereby quashed and set aside. The petitioner Devangbhai Arvindbhai Patel, hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

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